

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

May 8, 2002

Opinion No. 02-061

Inability of county beer board to revoke beer permit because place of public gathering is built within the prohibited distance for beer sales

QUESTIONS

1. May a county beer board revoke or refuse to renew the beer permit of a business for the sole reason that a church is built within 2,000 feet of the business location?
2. May a county that has enacted an ordinance that prohibits the sale, storage or manufacture of beer within 2,000 feet of a church, school, or other place of public gathering amend the ordinance to protect the beer permits of businesses that have places of public gathering built within 2,000 feet of their premises after the issuance of their beer permits?

OPINIONS

1. No. The Tennessee Supreme Court has previously held that a beer board may not revoke a beer permit solely on the basis that the business is located within 2,000 feet of a church if the church was built after the business was granted the permit.
2. Yes. Such an amendment would, however, appear to be unnecessary in view of the Supreme Court's prior ruling and the plain language of the applicable statute that addresses the enactment of distance requirements.

ANALYSIS

1. The first question was presented as a request for "an opinion clarifying whether or not a church or other similar place of public gathering voluntarily waives any objection to the sale of beer at a particular location when a church or other similar place of public gathering voluntarily locates itself on property within 2,000 feet of a business that is actively engaged in the sale of beer such that the Two Thousand Foot Rule should not be used as a basis for denying a beer license to that location." Whether

or not a church “waives” its objection to the sale of beer by a pre-existing business that is within 2,000 feet of its building, a beer board cannot revoke the current beer permit of such a business based solely on the fact that a church locates itself within 2,000 feet of the business.

For purposes of this opinion request, this Office assumes that a county has enacted a distance ordinance that prohibits the sale, storage, or manufacture of beer within 2,000 feet of churches, schools, or other places of public gathering pursuant to Tenn. Code Ann. § 57-5-105(b)(1). Further, this Office assumes that a church has been constructed or will soon be constructed within 2,000 feet of a business that has a valid beer permit. Thus, the question is whether the county beer board may or should revoke the business’ beer permit since it is or soon will be selling and storing beer within 2,000 feet of a church.

The Tennessee Supreme Court has previously addressed this specific factual scenario in the case of *Sparks v. Beer Committee of Blount County*, 207 Tenn. 312, 339 S.W.2d 23 (1960). In that case, the Court held that a beer board could not revoke a business’ beer permit that had been issued in 1951 based solely on the fact that a church built in 1958 was within 2,000 feet of the business. 339 S.W.2d at 25. Although the Court opined, contrary to the more modern view, that a beer permit is not a “property right,” the Court stressed that a license such as a beer permit conveys a right that cannot be invaded or curtailed by an unreasonable regulation that is oppressive in its application. *Id.* at 24. The Court noted that the 2,000 foot limit from churches and public buildings was part of the statute addressing the granting of beer permits:

Section 57-205, T.C.A., is the statute prescribing when licenses to sell outside of a city or a town may be granted by the body authorized to grant such licenses, and in this Section the 2,000 foot limit from churches and public buildings is placed. The statute says: “*** the county court having the right to forbid such storage, sale or manufacture at places within two thousand (2,000) feet of such places of public gatherings in its discretion.” Under this provision the County Court of Blount County adopted a resolution setting out the statutory provisions under which their Beer Committee herein might grant a permit to sell beer. This provision to grant a license though does not apply to a license which is already granted. . . . This section giving the County Court or its Beer Committee the discretion of permitting the storage or sale of alcoholic beverages did not embrace a place when the church had come and established itself after the permit was granted.

Id. at 25. Thus, the Court held that the revocation of a permit because of the subsequent building of a church was “an arbitrary and unreasonable exercise of discretion granted the board.” *Id.* at 26.

The regulatory scheme governing the sale, manufacture, and traffic in beer and alcoholic

beverages containing less than five percent (5%) alcohol by weight is set out in Title 57, Chapter 5 of the Tennessee Code. The State legislature has placed regulatory power over such beverages in local governments, which the legislature divides into three distinct categories: (1) cities and towns, (2) Class A counties, consisting of counties not governed by metropolitan governments as defined in Tenn Code Ann. § 7-2-101, and (3) Class B counties, consisting of counties governed by metropolitan governments. This Office assumes, based on the language used in the request, that the questions refer to a class A county.

Tenn. Code Ann. § 57-5-105(b) provides that for businesses in class A counties outside of incorporated municipalities:

(b) In order to receive a permit, an applicant must establish that:

(1) No beer will be sold except at places where such sale will not cause congestion of traffic or interference with schools, churches, or other places of public gathering, or otherwise interfere with public health, safety and morals, the county legislative body having the right to forbid such storage, sale or manufacture within two thousand (2,000) feet of such places of public gatherings in its discretion. Nothing in this subdivision shall apply to places of business that are located in the terminal or main building at public airports serviced by commercial airlines with regularly scheduled flights

The current statutory provision that addresses the granting of beer permits provides that a county may prohibit the sale, storage and manufacture of beer within 2,000 feet of churches and other places of public gathering as was the case with the prior Tenn. Code Ann. § 57-205. It is this statute that grants to counties the right to adopt a beer ordinance or rule that prohibits beer sales within 2,000 feet of a church, school or other place of public gathering. *See Youngblood v. Rutherford County Beer Board*, 707 S.W.2d 507 (Tenn. 1986).

This Office finds no reason inherent in the language of the current statute to suggest that the holding in *Sparks* is not applicable to the fact pattern presented by this question. The statutory language that was the focus of the *Sparks* Court has remained virtually unchanged and intact. Thus, this Office believes that a county beer board may not revoke a business' current beer permit based solely on the building of a church or other place of public gathering within 2,000 feet of its location.

2. As discussed in the answer to question number 1, a county may through the enactment of an ordinance prohibit its beer board from issuing beer permits to businesses located within 2,000 feet of a church or other place of public gathering. However, as held by our Supreme Court, a county beer board may not revoke a beer permit solely because a church or other place of public gathering is constructed within 2,000 feet of a permit holder's business after the business is issued a permit. Thus, it appears to be unnecessary for a county's beer ordinances to be amended to state explicitly that a beer permit may not be revoked because of such a situation.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

M. TY PRYOR
Assistant Attorney General

Requested by:

The Honorable Doyle "Butch" Lewis, Jr.
State Representative
108 War Memorial Building
Nashville, TN 37243-0147